

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement
322-6441

July 2, 1984

Stephen T. Terry
McDonald, Halsted & Laybourne
1200 Wilshire Blvd.
Los Angeles, CA 90017

Re: Advice Letter No. A-84-155

Dear Mr. Terry:

Thank you for your request for advice on the campaign reporting provisions of the Political Reform Act.

FACTS

A company desiring to construct multi-family dwellings successfully litigated the issue of whether the county should issue building permits for the development. In order to foster support for the project, the company sent numerous letters to county residents, paid for community and educational group meetings, and sponsored dinners on behalf of the various groups.

After the litigation, the individuals in opposition to the project began a county-wide initiative to impose rent control on all rental dwellings. The company opposes this initiative, but it has not yet expended any money in opposition to the initiative.

Recently, the company decided to express its gratitude to those who supported the project by inviting them to a dinner. At the dinner, the supporters will be informed of the construction's progress and of the initiative. Included in the invitation were the following references to the rent control initiative:

"Currently an effort is underway by the rent control lobby to gather signatures for an anti-landlord initiative. This initiative would severely restrict

Stephen T. Terry
July 2, 1984
Page 2

landlords' rights and could drastically affect your private property rights in the county."

"If you are interested in attending the dinner and/or want further information regarding the initiative, please return the enclosed postcard."

QUESTION PRESENTED

Under the Political Reform Act, is the company required to report its expenditures for the letter that was sent to the supporters of the project?

DISCUSSION

The company must report the money it expended for the mailing if the company qualifies as one of the following types of committees:

- (1) A recipient committee;
- (2) An independent expenditure committee; or
- (3) A major donor committee.

The company is a recipient committee if it receives \$500 or more in contributions during a calendar year. If this has occurred, the committee must report all of its contributions^{1/} and expenditures^{2/}, including the expenditures for the letter.

¹ Government Code Section 82015 and 2 Cal. Adm. Code Section 18215, copy enclosed. Hereinafter all statutory references are to the Government Code unless otherwise indicated.

^{2/} The term "expenditure" is defined as "any monetary or nonmonetary payment for political purposes. A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters against the passage of any measure.

Stephen T. Terry
July 2, 1984
Page 3

The company is an independent expenditure committee if it makes independent expenditures of \$500 or more in a calendar year. An "independent expenditure" is an:

... expenditure made by any person in connection with a communication which expressly advocates the . . . defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the ... [ballot measure] committee.

(Section 82031)

The letter paid for by the company, discusses a "clearly identified" ballot measure. (See 2 Cal. Adm. Code Section 18225(b)(1)(C).) However, the letter does not "expressly advocate" the defeat of the measure. Regulation Section 18225(b)(2) states that a communication "expressly advocates" the defeat of a measure if it contains express words of advocacy such as "vote against," "reject," or "defeat." Although the letter states that the initiative will be harmful to landlords' rights, it does not advocate that the reader take a specific action. The letter merely offers the recipient the opportunity to receive additional information. Thus, the expenses incurred in the mailing of the letter do not qualify as independent expenditures.

The company is a major donor committee if it makes contributions directly to, or expends funds at the behest of, a ballot measure committee totaling \$5,000 or more in a calendar year. A contribution or expenditure is "made at the behest" of a ballot measure committee if it is made under the control or at the direction of, in cooperation, consultation, or concert with, or at the request or suggestion of, the committee. (2 Cal. Adm. Code Section 18215.) If the company qualifies as a major donor committee, it must report its expenditures, including the expenditures for the letter.^{3/}

If you have any questions concerning this letter, please feel free to contact me. If you have future questions regarding

^{3/} Major donor committees may not receive more than \$500 in contributions.

Stephen T. Terry
July 2, 1984
Page 4

the Act's campaign filing requirements, please contact our
Technical Assistance and Analysis Division at (916) 322-5662.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

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Enclosure

MACDONALD, HALSTED & LAYBOURNE

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1200 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90017

JUN 3 2 18 PM '84

EVERETT B. LAYBOURNE
WILLIAM F. RINEHART
GILBERT E. HAAHNT
ORVILLE A. ARMSTRONG*
MORTON B. JACKSON*
CENNIS KEELEY*
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CYNTHIA R. URMER

*PROFESSIONAL CORPORATION

A. STEVENS HALSTED, JR.
ROBERT H. EDWARDS
H. STEPHEN CRANSTON
COUNSEL

ALEXANDER MACDONALD
1989-1970

SAN DIEGO

WELLS FARGO BANK BUILDING
101 WEST BROADWAY
SAN DIEGO, CALIFORNIA 92101
(619) 236-1441

CABLES: MACHALAY LSA
TELECOPIER: 213-461-8552
TELEX: 752718

TELEPHONE: (213) 481-1200

June 4, 1984

Robert E. Leidigh, Esq.
Fair Political Practices Commission
1100 "K" Street
Sacramento, California 95814

Dear Mr. Leidigh:

As a follow-up to our telephone conversation of May 18, 1984 with respect to the Fair Political Practices Commission's interpretation of "expenditures" under California Government Code §82025, in conjunction with Title 2, California Administrative Code §18225(b)(2), we offer the following hypothetical set of facts for your consideration:

The Company has been involved in very expensive and much publicized litigation concerning the issuance by the County of building permits for the construction of multiple family dwellings. In concert with its efforts to obtain the permits, the Company has sent numerous letters to county residents, financed community support and educational group meetings, and sponsored dinners on behalf of the various groups.

Following their unsuccessful legal efforts to stop the building of the multiple family dwellings, individuals who opposed the issuance of the construction permits propounded a county-wide initiative seeking to impose rent control upon all such dwellings. Obviously the Company opposes such an initiative but as yet has not expended any resources in opposition to the initiative.

Robert E. Leidigh, Esq.
June 4, 1984
Page two

Recently the Company decided to express its gratitude for the support given to it by members of the community by inviting them to a dinner intended to inform such individuals of the progress of the construction program. Included in this letter of invitation were the following references to the rent control initiative:

"Currently an effort is underway by the rent control lobby to gather signatures for an anti-landlord initiative. This initiative would severely restrict landlords' rights and could drastically affect your private property rights in the county.

"If you are interested in attending the dinner and/or want further information regarding the initiative, please return the enclosed postcard."

According to the standard announced by the United States Supreme Court in Buckley v. Valeo (1976), 424 U.S. 1, 76, the above letter apparently would not be deemed an expenditure for purposes of reporting under the California Political Reform Act of 1974 since it was not a payment "for the purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates or the qualification for passage of a measure."

The Buckley court gave a narrow meaning to the expression "for the purposes of influencing" to avoid potential vagueness problems. In response to Buckley, Title 2, California Administrative Code, Section 18225(b)(2) was adopted whereby "a communication 'expressly advocates' the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for,' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."

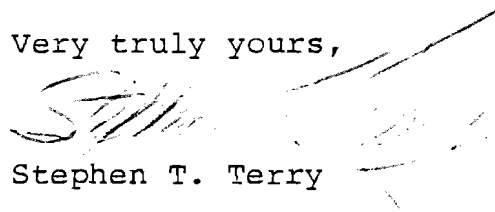
Robert E. Leidigh, Esq.
June 4, 1984
Page three

Based upon these standards, it is our understanding that the passages in the above-referenced letter do not constitute "express advocacy" in the absence of language that unambiguously urges the defeat of the rent control measure. Consequently, expenses incurred in the mailing of the letter of invitation would not be an expenditure for political purposes within the meaning of California Government Code §82025.

During our telephone conversation you speculated that the Commission would concur in the above analysis. In order to more fully determine the Commission's approach to this issue, we wish to request an informal opinion from your office on the above matter.

Any assistance you might extend to us in this regard would be greatly appreciated.

Very truly yours,



Stephen T. Terry

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